

EXHIBIT A

SCHEDULING CONFERENCE

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 ARCHER AND WHITE SALES,)
5 INC.)
6)
7 vs.) CASE NO. 2:12-CV-572-JRG-RSP
8)
9 HENRY SCHEIN, INC., ET AL)

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11 SCHEDULING CONFERENCE
12 FEBRUARY 27, 2013

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1 A P P E A R A N C E S

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1 appropriate and common and specifically provided for by
2 both Federal Antitrust Law and the Texas Free Enterprise
3 and Antitrust Act.

4 And just to be clear, Your Honor, what --
5 what we have sought, contrary to the arguments of
6 counsel for the Defendants, is not just a permanent
7 injunction at the end of the day; but in our prayer for
8 relief, we expressly also request preliminary
9 injunction -- or preliminary injunctive relief.

10 And we have pled, Your Honor, in
11 Paragraph 52 of our complaint about some of the ongoing
12 anticompetitive conduct that is occurring, and we
13 continue to hear reports from our client to this day of
14 conduct that is occurring.

15 So it is not a boilerplate claim. It is
16 not just a throw in to try to avoid arbitration. It is
17 a critical part of our lawsuit.

18 JUDGE PAYNE: Have you done anything
19 toward the filing of a Motion for Preliminary
20 Injunction?

21 MS. BRUMBAUGH: We have not filed one at
22 this point, Your Honor.

23 JUDGE PAYNE: Do you intend to do so?

24 MS. BRUMBAUGH: We have not made that
25 determination yet, Your Honor. I mean, obviously there

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1 is some discovery that we would like to take.

2 But whether we do or not, Your Honor, our
3 view is that the exception is clear on its face. It
4 excepts actions seeking injunctive relief. It doesn't
5 except actions just seeking permanent injunctive relief
6 or actions just seeking, you know, primarily injunctive
7 relief. That -- that would require a rewriting of the
8 clause.

9 JUDGE PAYNE: Was your client aware of
10 this arbitration clause at the time that this suit was
11 filed?

12 In other words, was this suit drafted in
13 contemplation of this arbitration clause?

14 MS. BRUMBAUGH: Drafted in contemplation
15 of the clause?

16 JUDGE PAYNE: Uh-huh (affirmative.)

17 MS. BRUMBAUGH: You know, we -- we
18 drafted it seeking all the relief that we thought was
19 appropriate, Your Honor.

20 And it certainly happens that part of the
21 relief that we believe is appropriate and the nature of
22 this action is one that takes it out of the arbitration
23 provision.

24 We believe that our client is entitled to
25 have a jury hear this action that seeks injunctive

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JUDGE PAYNE: All right. Thank you,

Mr. Pitt.

MR. PITTS: Thank you, Your Honor.

JUDGE PAYNE: Does the Plaintiff want to respond on the issue of equitable estoppel?

MS. BRUMBAUGH: Yes. Your Honor, just a few points; and, first, I can provide the Court with the Delaware cite. It's 906A2d76, and that's Delaware Supreme Court 2006.

JUDGE PAYNE: Okay. Thank you.

MS. BRUMBAUGH: Just a few points, Your Honor.

Obviously, first of all, if the Court finds, as we believe that the Court should, that the exclusion applies here and this action seeking injunctive relief is excepted from the arbitration provision, then the Court doesn't even need to address this issue of whether non-signatories get to take advantage of the doctrine of equitable estoppel, which is discretionary, a discretionary call by the Court as to whether equitable estoppel applies or not.

JUDGE PAYNE: And what would you contend the cases tell us about under what circumstances we should exercise that discretion?

MS. BRUMBAUGH: Well, I -- we don't

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1 disagree that Grigson is sort of the key case that lays
2 out what the test is.

3 I've found it amusing, Your Honor, just a
4 little East Texas aside, that that case related to the
5 return of the Texas Chainsaw Massacre movie and Longview
6 native Matthew McConaughey, but I think that was
7 probably a terrible movie.

8 JUDGE PAYNE: Can I take judicial notice
9 of that?

10 MS. BRUMBAUGH: I didn't actually see it,
11 but what -- what we glean from the cases, Your Honor, is
12 that there's -- there's one branch of equitable estoppel
13 where a Plaintiff is seeking to use the agreement itself
14 to hold non-signatories liable.

15 That's not what's going on here. I mean,
16 the antitrust conspiracy at issue in this lawsuit didn't
17 arrive out of the 2007 Pelton & Crane agreement. It
18 began with an unlawful agreement between Defendant Shein
19 and Company X.

20 There is no agreement contained in an
21 arbitration clause or anything else between the
22 Plaintiff and these competing distributors, and then the
23 manufacturer Defendants joined in that conspiracy.

24 The other type of equitable estoppel,
25 this intertwined conduct prong, if you read the facts of

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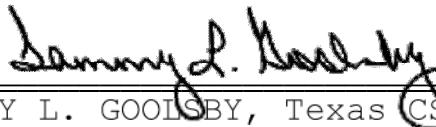
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7 REPORTER'S CERTIFICATION

8 February 27, 2013

9
10 I, TAMMY L. GOOLSBY, Certified Shorthand
11 Reporter in and for the State of Texas, do hereby
12 certify that the above and foregoing contains a true
13 and correct transcription of all portions of evidence
14 and other proceedings requested by counsel for the
15 parties to be included in this volume of the
16 Reporter's Record, in the above-styled and numbered
17 cause, all of which occurred in open court or in
18 chambers and were reported by me.

19 WITNESS MY OFFICIAL HAND this the 28th day
20 of March, 2013.

21 
22

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